

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 1273-10  
Bill No.: HCS for HB 641  
Subject: Contracts and Contractors; Bonds - General Obligation and Revenue  
Type: Original  
Date: April 15, 2013

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Bill Summary: This proposal specifies that no public owner, contractor, or subcontractor shall withhold retainage on public works projects if the public owner has obtained a bond.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
<b>FUND AFFECTED</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>FY 2016</b>
General Revenue	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
<b>Total Estimated Net Effect on General Revenue Fund</b>	<b>\$0 to (Unknown)</b>	<b>\$0 to (Unknown)</b>	<b>\$0 to (Unknown)</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>FY 2016</b>
University Funds	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>\$0 to (Unknown)</b>	<b>\$0 to (Unknown)</b>	<b>\$0 to (Unknown)</b>

Numbers within parentheses: ( ) indicate costs or losses.

This fiscal note contains 7 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
<b>Total Estimated Net Effect on FTE</b>	<b>0</b>	<b>0</b>	<b>0</b>

☐ Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

☐ Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
<b>Local Government</b>	<b>(Unknown over \$100,000)</b>	<b>(Unknown over \$100,000)</b>	<b>(Unknown over \$100,000)</b>

## FISCAL ANALYSIS

### ASSUMPTION

Officials at the **Office of Administration - Division of Facilities Management, Design and Construction (FMDC)** assume direct costs can't be estimated by FMDC; and in the event of a breach, it will be more difficult to provide the incentive necessary to get the defaulting contractor to comply with its obligations if the State only holds 150% retainage as proposed by this bill as opposed to the current 200%. If the original contractor doesn't comply and the State is compelled to bring in a replacement contractor, that will cost the State more money to complete the project - very likely more than the amount of retainage (be it 150% or 200%) withheld by the State.

Officials at the **Department of Conservation, Department of Economic Development, Department of Labor and Industrial Relations, Linn State Technical College, Missouri Department of Transportation, Metropolitan Community College** each assume there is no fiscal impact to their organization from this proposal.

Officials at the **University of Missouri** assume this proposal places an additional administrative burden on the public owner related to rejected and outstanding work. This will increase the marginal cost of project management to the University.

In recent history the University has averaged no fewer than 200 construction contracts per year. The University estimates the potential average cost of the entire requirements of this proposal to be as little as \$500 to \$2,500 per project due to closeout delays and related costs. But due to the volume of projects the University has, the total annual cost of this proposal is estimated to be no less than \$100,000 - \$500,000. The University has an exemplary record of prompt payment of its contractors and intervening on behalf of workers and subcontractors who have not been paid promptly. Without retainage we will no longer be able to do this.

Officials at the **Missouri State University** assume the cost of this proposal is hard to determine because the loss may be in the lost use of a completed project due to inaction on the contractor's part since incentive to finish the project is removed.

Officials at the **City of Kansas City** assume by changing the threshold level requiring bonds from \$25,000 to \$50,000 there is a potential saving to the owner. Bonds typically run between 1% to 3% of the project cost. Therefore, there is some marginal savings to the owner by not requiring bonds for a larger range of projects.

ASSUMPTION (continued)

However, regarding section 34.057.1(1), the changes removed any ability of an owner/engineer/architect to use any discretion in setting retainage. There may be cases where projects are high risk or have a very aggressive time schedule. In those cases, it may be appropriate to set retainage at a higher value to insure contractor's conformance with contractual obligations.

Regarding the change to 34.057.1(3), the City objects to the change. This change essentially cuts, by 25%, the amount of money an owner can retain on unresolved punch list items. In many cases it is difficult to get contractors to wrap up projects where the value of punch list items is low in relation to the total contract value. This change seriously undercuts an owner's leverage to get a contractor to wrap up a project.

Regarding the change to 34.057.1(4), the City objects to this change. This change essentially cuts the maximum amount of retainage that can be held on a project from a maximum of 10% to a maximum of 2%. This is unacceptable from an owner's point of view as it essentially removes any leverage it has over the contractor to finish a project. Furthermore, it affords the owner very little protection against the discovery of latent defects in work discovered in latter stages of contract completion.

Losses to the City are expected if there are no retainage amounts available on a project or the retainage amounts are reduced, the only recourse a City may have is to declare default and rely on a surety to complete the project. This can be a costly and cumbersome process with no guarantee that the surety will live up to its obligations. Furthermore, some projects cannot wait to be completed until the surety resolution process runs its course. Consequently the City will be forced to appropriate additional funds to complete a project; essentially paying twice for the same work.

There are also costs associated with the surety resolution process. Additional internal staff time has to be devoted to the resolution process, thus driving up administrative costs for each project. In some cases, where complex issues are involved, the City may look to outside legal counsel to assist in the resolution process; again driving up the administrative costs of the construction process.

Officials at the **City of Harrisonville** assume the impact is unknown but the use of retainage is essential to seeing contractors complete punch lists in a timely fashion. Getting money out of a bonding company can take years and cost more than the value of the work outstanding.

ASSUMPTION (continued)

Officials at the following cities: Ashland, Belton, Bernie, Bonne Terre, Boonville, California, Cape Girardeau, Clayton, Columbia, Dardenne Prairie, Excelsior Springs, Florissant, Frontenac, Fulton, Gladstone, Grandview, Independence, Jefferson City, Joplin, Kearney, Knob Noster, Ladue, Lake Ozark, Lebanon, Lee Summit, Liberty, Louisiana, Maryland Heights, Maryville, Mexico, Neosho, O'Fallon, Pacific, Peculiar, Popular Bluff, Raytown, Republic, Richmond, Rolla, Sedalia, Springfield, St. Charles, St. Joseph, St. Louis, St. Robert, Sugar Creek, Sullivan, Warrensburg, Warrenton, Webb City, Weldon Spring and West Plains did not respond to **Oversight's** request for fiscal impact.

Officials at the following schools: Blue Springs Public Schools, Branson Public Schools, Columbia Public Schools, Fair Grove Schools, Francis Howell Public Schools, Independence Public Schools, Jefferson City Public Schools, Kirksville Public Schools, Lee Summit Public Schools, Mexico Public Schools, Nixa Public Schools, Parkway Public Schools, Raytown School District, Sedalia School District, Sikeston Public Schools, Silex Public Schools, Special School District of St. Louis County, Spickard School District, St Joseph School District, St Louis Public Schools, St. Charles Public Schools, and Sullivan Public Schools did not respond to **Oversight's** request for fiscal impact.

Officials at the following counties: Andrew, Audrain, Barry, Bates, Boone, Buchanan, Callaway, Camden, Cape Girardeau, Carroll, Cass, Clay, Cole, Cooper, DeKalb, Franklin, Greene, Holt, Jackson, Jefferson, Johnson, Knox, Laclede, Lawrence, Lincoln, Marion, Miller, Moniteau, Monroe, Montgomery, New Madrid, Nodaway, Ozark, Perry, Pettis, Phelps, Platte, Pulaski, Scott, St. Charles, St. Louis, St. Francois, Taney, Warren, Wayne and Worth did not respond to **Oversight's** request for fiscal impact.

Officials at the following colleges: Crowder, Harris-Stowe, Jefferson College, Southeast Missouri State University, State Fair Community College, St. Charles Community College, Three Rivers Community College and Truman State University did not respond to **Oversight's** request for fiscal impact.

**Oversight** assumes it is unclear if projects done by the State and by state colleges and universities would be completed as bid or another contractor would need to be brought in. Oversight will reflect a \$0 (no replacement contractors needed) to Unknown impact to General Revenue for all state projects and to University Funds. Additionally, **Oversight** will reflect costs of Unknown over \$100,000 for all local political subdivisions.

<u>FISCAL IMPACT - State Government</u>	FY 2014 (10 Mo.)	FY 2015	FY 2016
<b>GENERAL REVENUE</b>			
<u>Cost</u> - State Agencies - regarding change in retainage rules	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>
<b>ESTIMATED NET EFFECT ON GENERAL REVENUE</b>	<b>\$0 to <u>(Unknown)</u></b>	<b>\$0 to <u>(Unknown)</u></b>	<b>\$0 to <u>(Unknown)</u></b>
<b>UNIVERSITY FUNDS</b>			
<u>Cost</u> - State Agencies - regarding change in retainage rules	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>	\$0 to <u>(Unknown)</u>
<b>ESTIMATED NET EFFECT ON UNIVERSITY FUNDS</b>	<b>\$0 to <u>(Unknown)</u></b>	<b>\$0 to <u>(Unknown)</u></b>	<b>\$0 to <u>(Unknown)</u></b>
<u>FISCAL IMPACT - Local Government</u>	FY 2014 (10 Mo.)	FY 2015	FY 2016
<b>LOCAL POLITICAL SUBDIVISIONS</b>			
<u>Cost</u> - Local Political Subdivisions do to change in retainage rules	(Unknown over <u>\$100,000</u> )	(Unknown over <u>\$100,000</u> )	(Unknown over <u>\$100,000</u> )
<b>ESTIMATED NET EFFECT ON LOCAL POLITICAL SUBDIVISIONS</b>	<b>(Unknown over <u>\$100,000</u>)</b>	<b>(Unknown over <u>\$100,000</u>)</b>	<b>(Unknown over <u>\$100,000</u>)</b>
<u>FISCAL IMPACT - Small Business</u>			

No direct fiscal impact to small businesses would be expected as a result of this proposal.

### FISCAL DESCRIPTION

This proposal increases from \$25,000 to \$50,000 the threshold dollar amount of a public works project that requires a contractor to purchase a security bond. Public owners, contractors, and subcontractors are prohibited from withholding retainage on public works projects if the public owner has obtained the security bond. If the public owner is not required to obtain a bond because the cost of the project is not estimated to exceed \$50,000, the public owner may withhold retainage on the project in an amount not to exceed 5% of the value of the contract or subcontract.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

### SOURCES OF INFORMATION

City of Harrisonville  
City of Kansas City  
Department of Conservation  
Department of Economic Development  
Department of Labor and Industrial Relations  
Linn State Technical College  
Missouri Department of Transportation  
Metropolitan Community College  
Missouri State University  
Office of Administration  
Division of Facilities Management, Design and Construction  
University of Missouri



Ross Strobe  
Acting Director  
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